

**SEPARATE STATEMENT OF COMMISSIONER
MICHAEL J. COPPS, CONCURRING**

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Third FNPRM, FCC 08-230

The measure of success for this auction is quite simple: whether it results in a public safety network that meets the needs of our nation's first responders. How we actually get from here to there is, of course, far more complicated, and I will turn to that in a moment. But I know that all of my colleagues and I agree that the gold standard here is whether we come up with a system that ***actually delivers for public safety***.

I limit myself to concurrence in today's item because I have concerns about whether the service rules we propose fully measure up to this high standard. I concur because I think we have a still-inadequate grasp of the precise contours of what it is that we propose to build; how to incent its construction and operation; how to make sure public safety can afford to use whatever is built; and how exactly, or even generally, the safety of the American people will be enhanced. Indeed, some believe the network envisioned in this item may not be substantially more robust than existing commercial networks—and for which public safety users may be asked to pay a significant fee (\$48.50 per user, per month) that many of them may be unable to afford. A network that is too expensive for first responders to use is little better than no network at all. “Let them eat cake” is simply not an acceptable answer when it comes to the public safety heroes who put their lives on the line every day to keep us safe. The system we build must ***attract*** users rather than shut out already cash-strapped public safety entities.

I am concerned that our item does not precisely specify what services and rights public safety users get in return for their per user, per month fee. This should be viewed as a core question, both in terms of serving public safety's needs and in making the public-private partnership financially viable. Does it allow a user to stream high-quality video? How often and how high-quality? Does it allow them to use VoIP applications (which some commercial wireless providers today do not allow)? How often and at what quality of service? Is a single police officer with a mobile device on his or her hip and a laptop computer in the police car one user or two for the purposes of the \$48.50 fee? I am also concerned that technical questions regarding speed, building penetration, and the functionalities of the network for public safety users are not precisely defined. And I am concerned that the FCC does not know how these factors and the degree of “hardening” we require compares to the standards of existing commercial—let alone public safety—networks. Ambiguities like these are essential to address up-front. If we leave them to later, uncertainties can only discourage potential bidders from participating. We've been down that uncertain road before with regard to the D Block. Once was enough.

Nor am I sure that today's item adequately deals with the question of how extensive—in terms of covering the maximum number of states—a public-private network must be in order for us to accept it as an appropriate use of public safety's spectrum. To begin with, our rules depart from the assumption in the previous auction that the network will necessarily be a 100% nationwide network. In fact, the rules we propose today specify that even if bidders appear for

as few as 11 of the country's 58 geographic regions, we will go ahead and build a network in those limited areas without any firm plan for how to create coverage in the rest of the country. So if a few big states and metro regions get "sold," all the rest of this spectrum could lie fallow.

On the other hand, we also have to deal with the reality that, in light of the failure to attract a single nation-wide bidder in the last auction, the best way to serve public safety users may be through a number of regional networks that use a common technological standard. Indeed, it is possible that regional carriers may in some areas be the best partners for public safety—with better coverage and the ability to tailor their networks to local needs. So I am also concerned that our rules allow the possibility that one company could win a single national license for a relatively low bid, even if other companies were willing to pay far more, in the aggregate, for regional licenses. That is because our proposed rules specify that we will always go with a national licensee over regional licensees if even *one* of the 58 regions (no matter how small) fails to receive a bid. This could tilt the balance too far in the other direction. While I recognize this is certainly one of the most difficult questions before us, I am not sure we've arrived at an acceptable solution.

Then there is the daunting matter of incentives for getting this network built by a commercial bidder or bidders. Building a viable model that would attract bidders and builders was always going to be a challenge, we knew that. And we failed on this score our first time out. But, many months later, we still don't have a clue about what it will take to attract the ten, fifteen or twenty billion dollars to actually deploy a public safety network. The wreck and ruin left in the wake of last week's financial melt-down only make matters worse—perhaps infinitely so. Finding money in the hallowed canyons of Wall Street or anywhere else to get this network built makes Indiana Jones' searchings look like child's play. Lack of certainty on top of lack of funding will not a public safety network make. Before we set an auction process into motion—before we even design the incentives necessary—the FCC simply must get a firm fix on what the rough costs of the public safety network are going to be. We need to know that this investment is something bidders can actually expect to recoup under the rules we establish—or else we won't get any bidders this time around either. I would just as soon take my chances passing a tin cup on Wall Street as put my faith in plunging financial markets finding a way to pony up billions for a network whose design and business case the FCC doesn't fully understand and has not, to my mind, sufficiently investigated.

Uncertainties abound. We don't know, for example, the trade-offs that would come from changing the monthly fee cap to, say, \$20 per user per month, or from adjusting the balance between regional and national bidding. We don't know how the business case would change if we said that public safety users can stream video at 200 kilobits per second for only 4 hours a day—or not at all. We don't know what would happen if we said that that police officer with a mobile device and a vehicle-based radio should count as one user rather than two. Without such granular knowledge, we are flying blind. I know we are asking questions about such things in this Further Notice, and that's good, but at this stage we should have more answers than questions. If this is really going to be the last chance for comment before final auction rules are promulgated, today's proposal should rest on a more solid foundation than it does.

Making this particular public-private partnership work is a task that goes far beyond the demands of a typical spectrum auction. I have called on many occasions for the FCC to develop these capabilities in-house or to reach a consulting relationship with outside experts whose

insights could have and should have informed the item before us. Even at this late juncture, I think it would be prudent for the FCC to engage some sort of outside consultant to assess the cost of the network specifications we propose today and the business case (or lack of a business case) for the public-private partnership described in the item. At least their insights could inform the final rules. But it does not appear this is going to happen.

Let me be clear—my purpose here is not delay. While I believe the past several months could have been used more productively, I applaud the desire of Chairman Martin to put public safety front-and-center here at the Commission. That was a long time coming at the FCC, but he is the one who did it. And I appreciate the work done by all kinds of interested parties, particularly the leading public safety organizations who have worked to move the process forward. I totally share their sense of urgency, for it has been over seven years since 9/11 and three since Hurricane Katrina, and the American people are still without a public safety wireless network capable of enhancing their safety. This *is* urgent business.

But I also believe that the only goal more pressing than doing this quickly is doing it right. I recognize, of course, that the line between moving fast and moving too fast is difficult to draw—and reasonable minds can certainly disagree about where to draw it. For my money, however, today's item falls on the wrong side of that line. And the stakes couldn't be higher: if we fall into the trap of committing public safety's 700 MHz spectrum to a public-private partnership that does not serve the needs of public safety, it's hard to envision a do-over or another bite at the apple. We will have squandered maybe our last best hope for getting it right for public safety.

The good news is that today's item gives commenters a proposal to consider that is specific in many respects. I appreciate the willingness of Chairman Martin and the Offices and Bureaus who worked on this item to create a set of proposals that tees up many of the appropriate details. I also am grateful for the willingness of my colleagues to offer proposed rules for comment. A decision with such profound implications for national security certainly demands the highest level of care and examination, especially given that our previous effort to create a public-private network was unsuccessful. I am pleased that commenters on the item will now have longer than the 14 days for initial input and 7 days for reply comments we suggested last spring. An issue so important and complicated as this one certainly warrants at least the 30 days for comment and 10 days for replies that we establish today—indeed, I would have preferred a somewhat longer period, given the many questions that remain unanswered.

The days immediately ahead are evidently going to be our only remaining opportunity to fill the many gaps I have cited. This is our last chance to insert real-world expertise and judgment into the proceeding. We need as many experts and organizations and stakeholders to step up to the plate and give us their help as we can find. I am asking, I am pleading, for this level of participation. And I am especially eager to see the reaction to our proposal from public safety users, our expert national organizations as well as the states and local jurisdictions that must decide whether to pay to use any network that is built. It is time for you to tell us what you really think—up or down, yes or no, move forward or go back to the drawing board. As I have said before, much as it would pain me to go back to the drawing board yet again, that outcome is preferable to committing ourselves to a flawed result. But if stakeholders and interested parties really chime in over the next 40 days with their best and brightest thinking, we may just be able to get this right and move toward final auction rules in a timely fashion.

Thanks to each of my colleagues for their ongoing attention to this important matter, thanks again to the Chairman for keeping public safety front-and-center, and my deep, deep gratitude also for the hard and dedicated work of Chief Poarch, Jim Schlichting, Julie Knapp and their capable and committed FCC teams.